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UNITED STATES DISTRICT COURT
 SOUTHERN DISTRICT OF NEW YORK

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	:	[ECF Case --Filed Electronically]
TOWN & COUNTRY LINEN, CORP.,	:	
	:	Case No.: 07 CV 3159-MGC
Plaintiff,	:	
	:	<u>AFFIRMATION OF</u>
- against -	:	<u>MICHAEL FISCHMAN</u>
	:	
P/KAUFMANN, INC.,	:	
	:	
Defendant.	:	
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MICHAEL FISCHMAN, an attorney duly admitted to practice law in the Courts of the State of New York and before this Court affirms the following to be true under the penalties of perjury:

1. I am a partner in the firm of Phillips Nizer LLP, counsel for defendant P/Kaufmann, Inc. ("P/Kaufmann") and as such am fully familiar with the facts and circumstances contained herein. I submit this affidavit in support of P/Kaufmann's motion for an Order (1) dismissing the action in its entirety for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure, and (2) to the extent that the Court finds that it has subject matter jurisdiction, dismissing Counts I, III, IV, and V of the Town and Country Linen Corp. ("T&C") Complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil

Procedure for failure to state claims upon which relief can be granted, and dismissing Count II of the Complaint pursuant to Rule 9(b) of the Federal Rules of Civil Procedure for failure to plead an essential element of fraud with requisite particularity.

2. Annexed hereto as Exhibit 1 is a true and correct copy of the Complaint in this action dated April 19, 2007.

3. Annexed hereto as Exhibit 2 is a true and correct copy of an e-mail dated April 19, 2002, from David J. Beyda (T&C) to Lee Kabat (P/Kaufmann), with copies to David Grazi (T&C) and Frank Scalice (T&C) referred to as the "License Agreement" in paragraph 19 of the Complaint. Exhibit 2 also includes the April 19, 2002 response from Mr. Kabat to Mr. Beyda.

4. Annexed hereto as Exhibit 3 are true and correct copies of a representative sample of the purchase orders issued by T&C (as "Bath By Town & Country, Inc.") to P/Kaufman for Parachute shower curtains.

5. Annexed hereto as Exhibit 4 are true and correct copies of reprinted invoices issued by P/Kaufmann (through its "Bloomcraft Home" division) to T&C for Parachute shower curtains.

6. Annexed hereto as Exhibit 5 is a listing from the United States Copyright Office of the approximately 3,300 T&C copyright registrations filed by and on its behalf between 1978 and May 15, 2007. Having personally reviewed documents retrieved from the Copyright Office website, I can confirm that the list at Exhibit 5 includes approximately 100 copyright registrations filed by T&C between March 1, 2002 and May 31, 2002. There is no listing of a copyright registration for "Parachute".

7. Annexed hereto as Exhibit 6 is a true and correct copy of a page from the website of T&C's counsel in this action, Amster Rothstein & Ebenstein LLP. The website lists T&C as a representative client of the firm.

Dated: New York, New York
June 1, 2007

S/ Michael S. Fischman

Michael S. Fischman